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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JASON A. JOHNSON,

Defendant and Appellant.

C063217

(Super. Ct. No. 08F6725)

Following his plea of guilty to possession of methamphetamine, defendant Jason A. Johnson appeals the sentence imposed. He contends the trial court computed his custody credits incorrectly and that the \$780 fine was unauthorized. We shall remand the matter to the trial court to correct the errors.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On August 13, 2008, defendant was stopped by a Redding police officer. He was sweating profusely, extremely fidgety, and generally displaying signs of someone under the influence of a central nervous system stimulant. He informed the officer he was on parole from the California Department of Corrections and Rehabilitation. A search revealed hypodermic syringes, 0.2

grams of methamphetamine, a metal spoon, and a notebook with a recipe for making methamphetamine. Defendant pled guilty to possession of methamphetamine, admitted he had had a prior serious felony, and had served prior prison terms. As part of the plea, the parties agreed defendant's maximum sentence was eight years.

Defendant filed a *Romero*<sup>1</sup> motion requesting the court dismiss his prior strike conviction. At sentencing, the court said it was inclined to deny the *Romero* motion. The court continued the sentencing hearing to allow defendant to enter a treatment program. On August 18, 2009, defendant failed to appear in court as ordered. Two months later, the court denied defendant's *Romero* motion and sentenced defendant to the maximum term of eight years in prison. The court awarded defendant 177 days of actual credit and 88 days of custody conduct credit under Penal Code<sup>2</sup> section 4019, which the court calculated as a total of 259 days of credit. The court imposed a \$200 restitution fine under section 1202.4, ordered defendant to provide section 296 DNA samples, and to register under Health and Safety Code section 11590. The court also ordered defendant to pay the "criminal lab fee of \$180, the fine of \$780." There was no base fine delineated as to the \$780 fine, no statutory basis articulated for the fine, and the assessments and

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

<sup>2</sup> All further section references are to the Penal Code.

penalties related to that base fine were not delineated on the record. The abstract of judgment<sup>3</sup> reflects the imposition of a \$720 fine which consisted of "a Base Fine (PC 1463.001) of \$200.00, the State Penalty Assessment (PC 1464(a)) of \$200.00, the DNA Penalty Assessment (GC 76104.6) of \$20.00, the DNA Penalty Assessment (GC 76104.7) of \$20.00, the State Court Facilities Construction fee (GC 70372) of \$100.00, the County Penalty Assessment (GC 76245) of \$140.00 and the State Criminal Fine Surcharge (PC 1465.7(a)) of \$40.00."

Defendant appeals the calculation of credits and the imposition of a base fine under section 1463.001. The People properly concede the error in the calculation of credits. We accept that concession. Defendant also appeals the imposition of the \$780 fine under section 1463.001. The People contend this fine was properly imposed under section 672. We shall reverse and remand the matter on the issue of the fine.

#### DISCUSSION

##### I

##### *Time Credit*

The court properly awarded defendant 177 days of actual credit and 88 days of good time credit under section 4019. However, the court miscalculated the sum of these numbers as 259, rather than 265 days.

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<sup>3</sup> Defense counsel waived the specification of assessments and statutory authority by the trial court.

As a general rule, "[i]f there are no other issues, the filing of a motion in the trial court is a prerequisite to raising a presentence credit issue on appeal." (*People v. Acosta* (1996) 48 Cal.App.4th 411, 427-428.) However, whereas here, an appeal contains issues other than a challenge to the trial court's custody credit calculation, the calculation is properly raised on appeal and "the appellate court may simply resolve the custody credits issue in the interests of economy." (*People v. Jones* (2000) 82 Cal.App.4th 485, 493.)

Since defendant properly received 177 days of actual credit and 88 days of good time/work time credits, he was entitled to 265 days of credit. The recent amendments to section 4019 do not operate to modify defendant's entitlement to credit, as he had a prior conviction for a serious or violent felony. (§ 4019, subds. (b) & (c); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

## II

### *Fines And Fees*

Defendant next contends the trial court imposed an unauthorized fine of \$780. He argues the base fine of \$200 and the attendant penalty assessments were not authorized by section 1463.001 or any other statute and therefore must be stricken. Defendant is correct that the base fine was not authorized by section 1463.001, which is a statute relating to the allocation and distribution of fines by the county treasurer.

The People contend the base fine is authorized under section 672,<sup>4</sup> which is a "catchall" statute allowing for the imposition of a fine when a fine is not otherwise provided for. Defendant concedes that the fine can stand if there is another proper statutory basis for it. However, defendant argues section 672 is not a proper basis here because it only applies when a fine is not otherwise provided for, and here a fine is provided for in Health and Safety Code section 11377, subdivision (c).<sup>5</sup>

There is a problem, however. The trial court orally imposed a fine of \$780. The abstract of judgment and minutes reflect the imposition of a \$720 fine. In addition, there are at least two errors in the statutory bases recited for these fines and assessments. As noted above, the reference to section 1463.001 as the basis for the \$200 base fine cannot be correct, as section 1463.001 is a fund allocation and distribution

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<sup>4</sup> Section 672 provides that "[u]pon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed."

<sup>5</sup> Health and Safety Code section 11377, subdivision (c) provides that "[i]n addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay . . . ."

statute, not a statute which authorizes the imposition of a fine, penalty, fee, or assessment. Similarly, the minute order references Government Code section 76245 as supporting the imposition of the "County Penalty Assessment." Government Code section 76245 provides names for the courthouse funds authorized in Government Code sections 76100 and 76101. It does not authorize the imposition of a county penalty assessment and could not be the basis for that assessment. We also do not know if the court intended to include a fine under Health and Safety Code section 11377, subdivision (c) and if so, in what amount. For example, the \$60 discrepancy between the \$720 fine the clerk recorded in the abstract of judgment and the \$780 fine the court orally imposed may reflect a discretionary determination by the court to impose a \$60 fine under Health and Safety Code section 11377, subdivision (c). On this record we cannot discern the amount of the fine imposed or the statutory bases for the fine and any assessments or penalties related to that fine.

To evaluate the propriety of the fines and fees imposed, we need to know the correct amount of the fine imposed as well as the statutory bases the court actually relied upon in imposing the fine. The record does not reflect whether it was Health and Safety Code section 11377, subdivision (c), section 672, or both. We will not speculate.

While defense counsel "waive[d] specification of assessments and statutory authority," counsel did not waive a statement of the statutory bases of the fine. Moreover, the errors in this case point out why the rule is that the trial

court "separately list with the statutory basis, all fines, fees and penalties imposed on each count." (*People v. High* (2004) 119 Cal.App.4th 1192, 1201.) "Although we recognize that a detailed recitation of all the fees, fines and penalties on the record may be tedious, California law does not authorize shortcuts." (*Id.* at p. 1200.) A stipulated shortcut often leads to unnecessary litigation.

#### DISPOSITION

The matter is remanded to the trial court to determine the statutory bases for the fine, penalty assessments, and fees imposed. The trial court is also ordered to correct the total amount of credits awarded from 259 to 265 days. The trial court is directed to amend the abstract of judgment to reflect these modifications and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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ROBIE, J.

We concur:

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HULL, Acting P. J.

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BUTZ, J.